

March 2, 2007

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Tom Purcell

Date of Filing: August 2, 2006

Case Number: TFA-0172

On August 2, 2006, Tom Purcell appealed a determination issued by the Office of Human Capital Management (OHCM) of the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In his appeal, Mr. Purcell contends that OHCM failed to conduct an adequate search for documents that were responsive to a FOIA request he filed. For the reasons detailed below, we find that OHCM conducted an adequate search for responsive documents and will deny the appeal filed by Mr. Purcell.

I. Background

Mr. Purcell filed a request in which he sought the following: (1) employment roster(s) (or similar documents) containing the name of any and all DOE employees, DOE contractor employees and/or subcontractor employees stationed at Amchitka, Island, AK, at any point prior to 1974; (2) employee roster(s) (or similar documents) containing the name of any and all atomic weapons employees (DOE, DOE Contractor, and/or subcontractor employees) working within the Linde Ceramics Plant, Tonawanda, NY, at any point from 1942-1947 and (3) employment roster(s) (or similar documents) containing the name of any and all atomic weapons employees (DOE, DOE Contractor, and/or subcontractor employees) who worked within the Uranium Division of the Mallinckrodt Chemical Works Destrehan Street Facility (St. Louis, MO) at any point from 1942-1957. *See* Determination Letter at 1. OHCM issued a determination which stated that “the Department of Energy was established in October 1977, therefore this office has no records pertaining to employees (contractor or federal) prior to 1977.” *Id.* at 1. In his Appeal, Mr. Purcell challenges the adequacy of the search conducted by OHCM.

II. Analysis

We have held that a FOIA request deserves a thorough and conscientious search for responsive documents. When we have found that a search was inadequate, we have consistently remanded the case and ordered a further search for responsive documents. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (2002); *Marlene R. Flor*, 23 DOE ¶ 80,130 (1993); *Native Americans for a Clean Environment*, 23 DOE ¶ 80,149 (1993). However, the FOIA requires that a search be reasonable,

not exhaustive. “The standard of reasonableness that we apply to the agency search procedures does not require absolute exhaustion of files; instead it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985).

In reviewing the present Appeal, we contacted officials in OHCM to ascertain the extent of the search that had been performed. The OHCM officials informed us that the Atomic Energy Commission (AEC) existed before the establishment of the Department of Energy in 1977. However, OHCM has no method of tracking employees (contractor or federal) from the AEC unless the requester has a specific name of an employee. If a specific name is provided, records may then be searched at the National Personnel Records Center located in St. Louis, Missouri. *See* Record of Telephone Conversations between Theresa Heinicke, OHCM, and Kimberly Jenkins-Chapman, OHA (December 21, 2006 and February 22, 2007). Given the facts presented to us, we are convinced that OHCM conducted an adequate search that was reasonably calculated to uncover documents responsive to Mr. Purcell’s request. Accordingly, Mr. Purcell’s Appeal should be denied.

DOE Headquarters’ FOIA office has informed us that when it forwarded Mr. Purcell’s request to OHCM, it also forwarded his request to other DOE offices, including the National Nuclear Security Administration Service Center in Nevada and the Oak Ridge Operations Office, to search for documents responsive to his request. Those offices were asked to respond directly to Mr. Purcell. It is possible that those offices may provide Mr. Purcell with the documents he seeks. If, however, Mr. Purcell is unsatisfied with the responses he receives from the other offices asked to perform searches, he may appeal those determinations to our office.

It Is Therefore Ordered That:

- (1) The Appeal filed by Tom Purcell, OHA Case No. TFA-0172, on August 2, 2006, is hereby denied.
- (2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
Senior FOIA Official
Office of Hearings and Appeals

Date: March 2, 2007